



## Phillips Lytle LLP

**Via ECF**

July 16, 2021

The Honorable Roanne L. Mann  
United States Magistrate Judge  
United States District Court  
for the Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Joint Status Report: *Suffolk County Water Authority v. The Dow Chemical Co. et al.*,  
No. 2:17-cv-6980-NG-RLM, and Related Cases

Dear Judge Mann:

On behalf of all 32 Parties in the referenced cases, and consistent with the status report provided to the Court on June 17, 2021 (ECF 183), the Parties update below their ongoing conferrals regarding certain outstanding discovery items raised in Defendants' Motions to Compel (ECF 173, 174), and referenced in prior status reports (ECF 179, 180, 183).

Following conferral, further information exchanges, and Plaintiffs' (and their consultants') production of various materials, the Parties have resolved outstanding issues regarding: (1) groundwater models; (2) SCWA's groundwater testing databases; (3) Plaintiffs' drinking water distribution models; (4) lists of Plaintiffs' wells with updated dioxane detections; and (5) certain modifications to search terms for documents remaining in privilege and supplemental review.

Related to the last report's update regarding dioxane investigatory documents, Plaintiff Hicksville Water District has completed its privilege review with respect to responsive "historic investigatory" documents and produced additional non-privileged responsive documents on June 30, 2021. Plaintiff NYAW searched its files again to ensure that it has produced all non-privileged, responsive documents relating to its investigation of dioxane in its wells, including historic investigative files. Aside from some historic documents of unknown origin and substance that NYAW has located in a cargo container that is not easily accessible, NYAW has confirmed that all other documents have been produced. The Parties are working together to determine what should be done with the cargo-container documents and do not anticipate needing the Court to resolve that issue.

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Below are updates regarding the issues on which the Parties were continuing to confer as of submission of the prior status report.

**Well Files:** SCWA and all additional Plaintiffs represented by Sher Edling produced all known well permits and water supply applications that were digitized by June 14, 2021 and also produced some of these files that previously existed only in hard copy. To the extent certain of these Plaintiffs had any other well permit or water supply applications that existed only in hard copy, these have been digitized as part of Plaintiffs' supplemental collections, have been prioritized for production, and Plaintiffs anticipate producing these files by no later than August 6 to the extent they have not already been produced. Plaintiff Hicksville produced additional well permits, water supply applications, and "well file" documents on June 30, 2021. Plaintiff NYAW confirmed through correspondence to Defendants on June 30, 2021, that its production of "well file" documents in NYAW's possession, custody and control is complete and also identified to Defendants those responsive documents that NYAW has produced. To the extent Defendants believe they need additional "well files," the Parties will confer to determine what those may be, and whether additional hard copy collections or inspections may be necessary.

**Drinking Water Distribution Models:** The remaining nine Plaintiffs (Bethpage, Garden City Park, Hicksville, Huntington/Dix Hills, Manhasset-Lakeville, Plainview, Roslyn, South Farmingdale, and Western Nassau) with distribution models in the possession of their third-party consultant, H2M, produced their distribution modeling files on June 22, 2021.

**Supplemental Document Collections:** In an effort to expedite production of documents, the Parties agreed to certain search term modifications applicable to documents that remain in privilege and supplemental review. Plaintiffs continue to project that SCWA's supplemental production in response to Defendants' previously served document requests will be made by August 6, 2021. The 26 non-SCWA Plaintiffs also intend to complete productions, including their most recent supplemental document collections, by August 6. Defendants requested that non-SCWA Plaintiffs provide an approximate volume of supplemental productions. The non-SCWA Plaintiffs represented by Sher Edling provided approximate volumes of supplemental documents subject to review (approximately 155,700 documents). Those Plaintiffs anticipate their actual productions will be substantially less than the volume subject to review.<sup>1</sup>

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<sup>1</sup> Plaintiffs Town of Huntington/Dix Hills Water District have encountered technical issues in processing their supplemental collections, and thus, have not provided volume estimates yet but expect to be able to do so by July 23, 2021.



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The Parties will continue to confer regarding the issues set forth above and other discovery items. The Parties will provide the Court with a further update in the next regularly scheduled status report on August 13, 2021, but will promptly bring to the Court any issues requiring earlier intervention following good faith conferral.

The Parties are available to discuss the issues set forth above, or any other issues, at the Court's convenience.

Respectfully submitted,

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<sup>2</sup> The Sher Edling firm represents all Plaintiffs in these related cases except Plaintiffs New York American Water (19-cv-2150) and Hicksville Water District (19-cv-5632).



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